

AMENDED IN SENATE APRIL 24, 2001

AMENDED IN SENATE MARCH 27, 2001

SENATE BILL

No. 910

**Introduced by Senator Dunn
(Coauthors: Senators Burton, Haynes, and Monteith)**

February 23, 2001

An act to amend Sections 65587 and 65589.3 of, and to add Section 65585.5 to, the Government Code, relating to general plans, ~~and making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 910, as amended, Dunn. General plans: housing elements.

(1) Existing law requires each city, county, or city and county to prepare and adopt a general plan for its jurisdiction that contains certain mandatory elements, including a housing element. A city, county, ~~a~~ *or* city and county is required to submit a draft housing element or draft amendment to its housing element to the Department of Housing and Community Development for a determination of whether the draft complies with state law governing housing elements. Existing law, until June 30, 2009, exempts any local government within the jurisdiction of the San Diego Association of Governments from this review requirement if it instead submits to the department with its housing element a self-certification of compliance with state law. In an action brought by any party to review the conformity of a housing element with applicable state law, a court review shall extend to whether the housing element, or portion thereof or revision thereto, substantially complies with that law.

This bill would require a court, on a finding that there is not substantial compliance, to award the plaintiff reasonable attorney's fees and costs and to levy a penalty not to exceed \$1,000 per unit of the total projected housing need for the jurisdiction specified amounts based on the population of the city, county, or city and county. The bill would provide that all penalties shall accrue to the *Housing Supply Account*, which the bill would create in the Housing Rehabilitation Loan Fund, and that no money in that account shall be expended except upon appropriation by the Legislature. ~~Because all money in this fund is continuously appropriated to the Department of Housing and Community Development for specified purposes, this bill would make an appropriation.~~

(2) Existing law provides that, in any action filed on or after January 1, 1991, challenging the validity of a housing element, there shall be a rebuttable presumption of the validity of the element or amendment if the Department of Housing and Community Development has found that the element or amendment substantially complies with the applicable law.

This bill would provide that, in any action filed on or after January 1, 2002, challenging the validity of a housing element, there shall be a rebuttable presumption of nonvalidity of the element or amendment if the department has found that the element or amendment does not substantially comply.

This bill would require the Controller to reduce by specified percentages the monthly allocation of funds disbursed under various fuel tax laws to any city, county, or city and county whose third or subsequent revision of its housing element is not in substantial compliance with state law *or that during the previous housing element cycle did not adopt a housing element determined by the department to be in substantial compliance with state law*, and to redistribute the money in the following month. The bill would require the department to report to the Controller monthly a list of noncompliant jurisdictions. The bill would state that, for the purposes of this provision, an authorized self-certification of a housing element shall be deemed to have been approved by the department unless a court finds that jurisdiction's housing element does not substantially comply with state law.

Vote: $\frac{2}{3}$ majority. Appropriation: ~~yes~~ no. Fiscal committee: yes. State-mandated local program: no.



The people of the State of California do enact as follows:

SECTION 1. Section 65587 of the Government Code is amended to read:

65587. (a) Each city, county, or city and county shall bring its housing element, as required by subdivision (c) of Section 65302, into conformity with the requirements of this article on or before October 1, 1981, and the deadlines set by Section 65588. Except as specifically provided in subdivision (b) of Section 65361, the Director of Planning and Research shall not grant an extension of time from these requirements.

(b) Any action brought by any interested party to review the conformity with the provisions of this article of any housing element or portion thereof or revision thereto shall be brought pursuant to Section 1085 of the Code of Civil Procedure; the court's review of compliance with the provisions of this article shall extend to whether the housing element or portion thereof or revision thereto substantially complies with the requirements of this article. If a court finds that any housing element or portion thereof does not substantially comply with the requirements of this article, the court, in addition to any other remedy allowed by law, shall award the plaintiff reasonable attorney's fees and costs and shall levy a penalty not to exceed ~~one thousand dollars (\$1,000) per unit of the total projected housing need for the jurisdiction as identified pursuant to Section 65584~~ the following amounts:

(1) *One hundred thousand dollars (\$100,000) for a city, county, or city and county with a population less than or equal to 100,000.*

(2) *Two hundred fifty thousand dollars (\$250,000) for a city, county, or city and county with a population greater than 100,000 and less than or equal to 250,000.*

(3) *Five hundred thousand dollars (\$500,000) for a city, county, or city and county with a population greater than 250,000 and less than or equal to 500,000.*

(4) *One million dollars (\$1,000,000) for a city, county, or city and county with a population greater than 500,000 and less than or equal to 1,000,000.*

(5) *One million five hundred thousand dollars (\$1,500,000) for a city, county, or city and county with a population greater than 1,000,000.*

1 *For the purposes of this section, the population of a county shall*
2 *only include the population residing in unincorporated areas. Any*
3 *penalties shall accrue to the Housing Supply Account, which is*
4 *hereby created in the Housing Rehabilitation Loan Fund*
5 *established by Section 50661 of the Health and Safety Code for the*
6 *purposes of the Multifamily Housing Program established by*
7 *Chapter 6.7 (commencing with Section 50675) of Part 2 of*
8 *Division 31 of the Health and Safety Code. Notwithstanding*
9 *Section 50661 of the Health and Safety Code, no money in the*
10 *Housing Supply Account shall be expended except upon*
11 *appropriation by the Legislature in the annual Budget Act or other*
12 *legislation.*

13 (c) If a court finds that an action of a city, county, or city and
14 county, which is required to be consistent with its general plan,
15 does not comply with its housing element, the city, county, or city
16 and county shall bring its action into compliance within 60 days.
17 However, the court shall retain jurisdiction throughout the period
18 for compliance to enforce its decision. Upon the court's
19 determination that the 60-day period for compliance would place
20 an undue hardship on the city, county, or city and county, the court
21 may extend the time period for compliance by an additional 60
22 days.

23 SEC. 2. Section 65589.3 of the Government Code is amended
24 to read:

25 65589.3. (a) In any action filed on or after January 1, 1991,
26 taken to challenge the validity of a housing element, there shall be
27 a rebuttable presumption of the validity of the element or
28 amendment if, pursuant to Section 65585, the department has
29 found that the element or amendment substantially complies with
30 the requirements of this article.

31 (b) In any action filed on or after January 1, 2002, taken to
32 challenge the validity of a housing element, there shall be a
33 rebuttable presumption of the nonvalidity of the element or
34 amendment if, pursuant to Section 65585, the department has
35 found that the element or amendment does not substantially
36 comply with the requirements of this article.

37 SEC. 3. Section 65585.5 is added to the Government Code, to
38 read:

39 65585.5. (a) The Controller shall reduce by the following
40 percentages specified in subdivision (b) the monthly allocation of

funds dispersed pursuant to subdivision (d), (e), or (f) of Section 2104 and Sections 2105, 2106, and 2107 of the Streets and Highways Code to any city, county, or city and county unless the city, county, or city and county has an adopted housing element that the Department of Housing and Community Development has determined pursuant to Section 65585 to be in substantial compliance with the requirements of this article; city and county that meets both of the following criteria:

(1) For the third or subsequent revision of its housing element, the city, county, or city and county has not adopted a housing element that the Department of Housing and Community Development has determined pursuant to Section 65585 to be in substantial compliance with the requirements of this article.

(2) The city, county, or city and county, during the previous housing element cycle, did not adopt a housing element that the Department of Housing and Community Development has determined pursuant to Section 65585 to be in substantial compliance with the requirements of this article.

~~(4)~~

(b) (1) The allocation shall be reduced by 20 percent for a city, county, or city and county that meets the criteria of subdivision (a) and whose third or subsequent revision of its housing element has not been found by the department to be in substantial compliance within 180 days of the deadline established by Section 65588.

(2) The allocation shall be reduced by 40 percent for a city, county, or city and county that meets the criteria of subdivision (a) and whose third or subsequent revision of its housing element has not been found by the department to be in substantial compliance within one year of the deadline established by Section 65588.

(3) The allocation shall be reduced by 60 percent for a city, county, or city and county that meets the criteria of subdivision (a) and whose third or subsequent revision of its housing element has not been found by the department to be in substantial compliance within two years of the deadline established by Section 65588.

~~(b)~~

(c) Any funds withheld from a city, county, or city and county pursuant to this section shall be added to the total pool of funds to be allocated and disbursed in the following month.

~~(e)~~

1 (d) For the purposes of this section, an adopted housing
2 element that has been self-certified pursuant to Section 65585.1
3 shall be deemed to have been approved by the department, unless
4 a court finds that the jurisdiction's housing element does not
5 substantially comply with this article.

6 ~~(d)–~~

7 (e) The department shall report to the Controller by the 20th
8 day of the month a list of cities, counties, and cities and counties
9 ~~whose third or subsequent housing element revisions that, as of the~~
10 ~~15th day of that month, have not been determined by the~~
11 ~~department to be in substantial compliance with the requirements~~
12 ~~of this article. meet both of the criteria described in paragraphs (1)~~
13 ~~and (2) of subdivision (a).~~ The department shall also report the
14 deadline date for the third or subsequent housing element revision
15 established in Section 65588 for each respective jurisdiction on
16 that list.

